

The cited standard requires that " [g]round conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary."

Inspector Kenneth Ruffner of the Federal Mine Safety and Health Administration (MSHA) performed an inspection at the Clover Bottom limestone mine on January 30, 1985, when he discovered the aforementioned condition. This condition is more fully described in a technical report authored by Mr. Richard R. Pulse, a geologist also employed by MSHA (Secretary's Exhibit No. 4). Depicted therein are photographs of areas where loose rock slabs and rock overhangs are present above and adjacent to the north, one-way portal and the middle, two-way portal. Mr. Pulse reports that many of these rocks are loosely keyed into the rock walls and separated or detached rock slabs were observed to be resting upon steeply inclined weathered shale slopes. In his opinion, all of these could potentially slide or fall into the mine roadway or into the portal entrances. The report and the photographs contained therein document the existence of numerous loose slabs of limestone resting upon steep slopes above the portals and rocks loosely keyed into place, above and adjacent to the access road and mine portals. In the opinion of this geologist, it has taken decades for this condition to develop, but these rocks constitute a present danger to people entering the portals, especially during periods of heavy rain or during cycles of freezing and thawing.

Inspector Vernon Denton also testified concerning the loose rock he observed at the two aforementioned portals. He stated that it appeared to be all different sizes--from the size of a bowling ball to something approaching table size, including a large slab of rock about six (6) feet long, three (3) feet wide, and a foot thick.

The respondent's witness, Mr. James Denham, testified of the extreme difficulty he had removing the rocks that MSHA demanded be removed to abate the citation. For example, he broke a 3/4 inch cable trying to pull one of the rocks down that MSHA claimed was loose.

On the issue of whether loose rock existed along the haulageways and travelways in the area of these two portals, I must make a credibility choice. Two mine inspectors are of the definite opinion that loose rocks existed in these areas and their opinion is buttressed by the report of a geologist who likewise concluded that numerous loose slabs